

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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|---------------------------------|---|--------------|
| STEVEN B. POLLACK AND BLUE ECO  | ) |              |
| LEGAL COUNCIL,                  | ) |              |
|                                 | ) |              |
| Plaintiffs,                     | ) |              |
|                                 | ) |              |
| v.                              | ) |              |
|                                 | ) |              |
| UNITED STATES DEPARTMENT OF     | ) | No. 08 C 320 |
| JUSTICE, UNITED STATES COAST    | ) | Judge Guzmán |
| GUARD, UNITED STATES NAVY,      | ) |              |
| UNITED STATES MARINE CORPS, AND | ) |              |
| UNITED STATES DEPARTMENT OF     | ) |              |
| DEFENSE,                        | ) |              |
|                                 | ) |              |
| Defendants.                     | ) |              |

**STATUS REPORT**

The Defendants in this action (the United States Department of Justice (Federal Bureau of Investigation), United States Coast Guard, United States Navy, United States Marine Corps, and United States Department of Defense) hereby update the Court on various discovery and other pending matters. Regarding the limited jurisdictional fact discovery that the Court allowed encompassing jurisdictional facts that the Defendants indicated they may raise in their motion to dismiss, the parties exchanged responsive documents on April 21, 2008, and the Defendants supplemented their production on April 23, 2008.<sup>1/</sup> In both its April 21st production and its April 23d supplemental production, the Defendants produced documents in previously-identified categories, *see* Dkt. 24 at 9-10, over a span of three years (2005-2008), consistent with the Court's order of March 26, 2008. The Defendants also produced certain specific documents (or responsive portions thereof) that the Defendants had previously identified in a March 6, 2008, letter to Plaintiff (which letter we later submitted to the Court, *see* Ex. 2 to Dkt. 16). In its April 21, 2008, transmittal letter to the Plaintiffs, the Defendants indicated that their review of documents was ongoing and that the Defendants' document production would be supplemented if additional non-privileged, responsive documents were identified.

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<sup>1/</sup> Discovery in this case is otherwise stayed pursuant to the Court's March 14, 2008, order. *See* Dkt. 21.

Subsequent to that production, Plaintiffs moved on April 28, 2008, to compel the production of certain Navy and FBI documents. *See* Dkts. 41, 43.<sup>2</sup> At a hearing on Plaintiffs' motions on May 1, 2008, the Court ordered with respect to the 1986 Navy Initial Assessment Study of the Great Lakes Naval Center, as to which the Navy had previously produced responsive excerpts, that the Defendants review the document again and produce any additional material relating to the geographical areas at issue in this litigation. With respect to FBI documents concerning activities at the FBI Range involving non-law enforcement personnel that Plaintiffs sought, and as to which the FBI had already produced to Plaintiffs numerous responsive documents, the Court ordered the FBI to conduct a further review of its documents and to produce any additional responsive materials. *See* May 1, 2008, Order, Dkt. 51.

As is explained in more detail in the May 12, 2008, letter to Plaintiffs attached as Exhibit 1, the Defendants produced to Plaintiffs a small amount of additional responsive material from the 1986 Navy Initial Assessment Study. The Defendants also produced additional responsive documents regarding activities at the FBI Range involving non-law enforcement personnel (over the last three years) that the FBI has identified since its April 21, 2008, document production.

In addition to this limited jurisdictional fact discovery, the FBI has been actively evaluating safety and operational considerations at the FBI Range in relation to the issues raised by Plaintiffs' Motion for Temporary Restraining Order (Dkt. 27). As the Court is aware, the FBI voluntarily suspended training activities involving firearms discharges at the FBI Range on April 1, 2008. That remains the current status, and the FBI will notify the Court and the Plaintiffs prior to resuming the currently suspended operations at the FBI Range. As the FBI indicated it would during the April 1, 2008, hearing, the FBI has engaged consultants on range safety and design to evaluate the FBI Range for, among other things, the potential for bullets to escape the range and to recommend corrective measures, if necessary. The consultants have been provided information concerning past indications of the potential for bullets or bullet fragments to escape the range (including into Lake Michigan), including information submitted by the Plaintiffs and information independently gathered by the FBI

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<sup>2</sup> At the hearing, Plaintiffs withdrew their motion to compel concerning FBI ammunition records, Dkt. 42, and the related portions of Plaintiffs' motion for discovery sanctions. Dkt. 44. Plaintiffs' motion for discovery sanctions was denied. May 1, 2008, Order, Dkt. 51.

following the April 1, 2008, hearing as to bullets and bullet fragments in Foss Park.<sup>37</sup> The FBI's consultants were also advised of an August 2001 incident involving an apparent bullet or bullet fragment that struck an individual working at the North Chicago Water Treatment Center, which is located immediately to the north of the FBI Range. The individual was not injured, and this incident pre-dates the FBI's substantial berm maintenance and re-grading activities in 2006. *See* Exhibit 1. The FBI's range safety and operations evaluation remains ongoing, and the FBI will report the results to the Court at an appropriate time in these proceedings.

Respectfully submitted,

Dated: May 12, 2008

/s/ David S. Gualtieri

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<sup>37</sup> *See* Combined Memo. In Support of United States' Motion to Dismiss and Opp. to Prelim. Inj., Dkt. 48, at 13, n.10.